

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE MARCH 28, 2007

SENATE BILL

No. 237

Introduced by Senator Dutton

February 14, 2007

An act to add Article 10.5 (commencing with Section 7170) to Chapter 9 of Division 3 of the Business and Professions Code, relating to contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 237, as amended, Dutton. Contractors: mechanics' liens.

Existing law, the Contractors' State License Law, provides for licensure and regulation of contractors by the Contractors' State License Board. That law authorizes the registrar of contractors to take disciplinary action against those contractors, including, but not limited to, the issuance of citations imposing civil penalties.

Existing law provides that specified persons, including, but not limited to, contractors, who contribute labor, skill, or services to a work of improvement, shall have a lien on the improved property. Existing law requires certain of those persons to give a preliminary 20-day notice (private work), as defined, prior to recording a claim of lien.

This bill would provide that a subcontractor, as defined, who fails to give that notice before recording a claim of lien is subject to disciplinary action. Under the bill, a civil penalty imposed through that disciplinary action would be required to comply with a specified schedule.

Existing law provides that if the claimant of a lien fails to commence an action to foreclose the lien within 90 days of recording the lien or fails to extend credit, as specified, the lien shall be automatically null and void.

This bill would require a contractor, who fails to timely commence that action or extend credit, to execute *and record* a release of the lien within 15 calendar days of the date that the lien becomes null and void. Under the bill, a contractor who fails to comply with that provision would be subject to disciplinary action. The bill would require that the board, before taking that disciplinary action, provide a written notice to the contractor, as specified. In addition, the bill would require that a civil penalty imposed through that disciplinary action comply with a specified schedule.

Existing law requires a contractor to retain specified records relating to his or her transactions as a contractor and to make those documents available for a period of not less than 5 years after completing a project. Existing law subjects the contractor to disciplinary action for failing to comply with that requirement.

This bill would require a contractor who records a claim of lien to retain all documents related to that claim for 5 years and to make those documents available to the registrar within 30 calendar days of receiving a written request. This bill would also provide that failure to comply with that provision would constitute cause for disciplinary action.

Existing law provides that a person who willfully includes in a claim of lien labor, services, equipment, or materials not furnished for the property described in the claim shall thereby forfeit the lien.

This bill would provide that a contractor who performs that act is also subject to disciplinary action, unless the contractor made an error in good faith and records a corrected claim of lien, as specified. This bill would also provide that if a contractor includes labor, services, equipment, or materials not furnished for the property, there is a rebuttable presumption that the contractor performed that act willfully if the contractor also fails to retain or timely provide documents to the registrar, as specified.

Existing law requires an original contractor, as defined, to defend an action on a claim of lien at his or her own expense where the claim is recorded for labor, services, equipment, or materials furnished to that contractor.

This bill would provide that the failure of an original contractor to comply with that provision constitutes cause for disciplinary action, provided that the owner of the property, or the owner of an interest in the property, has fully paid for the portion of the work of improvement that is the subject of the claim of lien.

Existing law provides that where no action has been brought to enforce a claim of lien, the owner of the property or the owner of an interest therein may petition the court for a decree to release the property from the lien and, if successful in obtaining that decree, shall be entitled to \$2,000 in attorneys’ fees.

This bill would provide that a contractor’s failure to pay those attorneys’ fees shall constitute both an injury to the petitioner, if specified conditions are met, and cause for disciplinary action.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10.5 (commencing with Section 7170) is
2 added to Chapter 9 of Division 3 of the Business and Professions
3 Code, to read:

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5 Article 10.5. Mechanics’ Liens

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7 7170. For purposes of this article, the following definitions
8 apply:

9 (a) “Claim of lien” is defined as provided in Section 3084 of
10 the Civil Code.

11 (b) “Original contractor” is defined as provided in Section 3095
12 of the Civil Code.

13 (c) “Preliminary 20-day notice (private work)” is defined as
14 provided in Section 3097 of the Civil Code.

15 (d) “Subcontractor” is defined as provided in Section 3104 of
16 the Civil Code.

17 7171. (a) A subcontractor licensed under this chapter who
18 fails to give a preliminary 20-day notice (private work) in
19 accordance with Section 3097 of the Civil Code before recording
20 a claim of lien pursuant to Section 3116 or 3117 of the Civil Code
21 is subject to disciplinary action.

22 (b) A disciplinary action taken pursuant to this section that
23 includes the assessment of a civil penalty shall comply with the
24 following schedule:

25 (1) A penalty of no more than one thousand dollars (\$1,000)
26 shall be imposed for the first violation.

1 (2) A penalty of two thousand five hundred dollars (\$2,500)
2 shall be imposed for the second violation.

3 (3) A penalty of five thousand dollars (\$5,000) shall be imposed
4 for the third and subsequent violations.

5 7172. (a) A licensee who records a claim of lien pursuant to
6 Section 3115, 3116, or 3117 of the Civil Code, and who fails to,
7 within 90 days of recording the claim, either commence an action
8 to foreclose the lien or extend credit and record both notice of the
9 extension and the terms of the credit in the office of the county
10 recorder, shall execute *and record* a release of the lien within 15
11 calendar days of the date that the lien becomes null and void under
12 subdivision (b) of Section 3144 of the Civil Code.

13 (b) A licensee who fails to comply with subdivision (a) is subject
14 to disciplinary action.

15 (c) Before taking disciplinary action against a licensee under
16 this section, the registrar shall notify the licensee, in writing, that
17 the licensee must execute *and record* a release of the applicable
18 lien within 15 calendar days from the postmarked date of the notice,
19 and that failure to comply shall result in the assessment of the
20 applicable penalty as provided in subdivision (d). The notice shall
21 be sent by registered and regular mail to the licensee's address of
22 record on file with the registrar.

23 (d) A disciplinary action taken pursuant to this section that
24 includes the assessment of a civil penalty shall comply with the
25 following schedule:

26 (1) A penalty of no more than one thousand dollars (\$1,000)
27 shall be imposed for the first violation.

28 (2) A penalty of two thousand five hundred dollars (\$2,500)
29 shall be imposed for the second violation.

30 (3) A penalty of five thousand dollars (\$5,000) shall be imposed
31 for the third and subsequent violations.

32 7173. (a) It is a violation of this chapter for a licensee, who
33 records a claim of lien pursuant to Section 3115, 3116, or 3117 of
34 the Civil Code, to willfully include in the claim labor, services,
35 equipment, or materials not furnished for the property described
36 in the claim.

37 (b) If a licensee includes in a claim of lien labor, services,
38 equipment, or materials not furnished for the property described
39 in the claim, there is a rebuttable presumption affecting the burden
40 of proof that the licensee performed that act willfully if the licensee

1 also fails to retain or make available documents related to that
2 property in accordance with Section 7174.

3 (c) This section shall not apply to an error made by the licensee
4 in good faith if the licensee records a corrected claim of lien within
5 10 calendar days of the date that the licensee learns of the error.

6 (d) A licensee who violates this section is subject to disciplinary
7 action.

8 7174. A licensee who records a claim of lien pursuant to
9 Section 3115, 3116, or 3117 of the Civil Code, shall, in accordance
10 with Section 7111, retain all documents related to the property that
11 is the subject of the claim for five years after completion of the
12 relevant construction project or operation. The licensee shall make
13 the documents available to the registrar within 30 calendar days
14 after receiving a written request for the documents. Upon a showing
15 of good cause, the registrar may grant the licensee no more than
16 30 additional calendar days to provide the documents required by
17 this section. Failure by a licensee to comply with this section
18 constitutes cause for disciplinary action.

19 7175. The failure of an original contractor to defend an action
20 pursuant to Section 3153 of the Civil Code constitutes cause for
21 disciplinary action if the owner of the property, or the owner of
22 an interest in the property, has paid in full for the portion of the
23 work of improvement that is the basis of the claim of lien.

24 7176. The failure of a licensee to pay attorneys' fees awarded
25 by a court under Section 3154 of the Civil Code within 90 days of
26 the date of the court's decree constitutes both of the following:

27 (a) An injury to the petitioner if the petitioner has paid in full
28 the attorneys' fees incurred in order to obtain the decree.

29 (b) Cause for disciplinary action, in addition to any
30 administrative action authorized by this chapter.

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